

Circular No.998/5/2015-CX  
dated the 28<sup>th</sup> Feb., 2015

F. No. 96/54/2014-CX.1  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs

To  
Principal Chief Commissioners / Chief Commissioners of Central Excise (All),  
Principal Chief Commissioners/Chief Commissioners of Central Excise of Central Excise &  
Service Tax (All),  
Principal Chief Commissioners / Chief Commissioners of Service Tax (All),  
Principal Chief Commissioners / Chief Commissioners of Customs (All),  
Web-master, CBEC

Madam/Sir,

**Sub: Withdrawal of prosecution filed in a court – reg.**

Your kind attention is invited to the issue of withdrawal of prosecution after it has been filed in a court of law. Instructions in this regard were issued on the Central Excise side vide Circular no. 30/30/94-CX dt 4-4-1994. The relevant part of the instruction contained in paragraph 5 is reproduced below –

*In cases where a complaint has already been filed in the court, it will be upto the court to decide whether or not to pursue prosecution in terms of Section 257 and 321 of Cr. P.C. 1973. If the order for withdrawal has been given by a court, the prosecution can be withdrawn by the Assistant Collector after getting a formal order from the Principal Collector.*

2. Since then an important judgment of Hon'ble Supreme Court has laid the law on the issue of relation between adjudications proceedings and prosecution in case of Radheshyam Kejriwal [2011(266)ELT294(SC) or 2011-TIOL-19-SC-FEMA] . In this judgment Hon'ble Supreme Court has laid the following guidelines in paragraph 19 –

“ The ratio which can be culled out from these decisions can broadly be stated as follows :-

- (i) Adjudication proceeding and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue underlying principle being the higher standard of proof in criminal cases.

In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court. "

3. It is therefore directed that where on identical allegation a noticee has been exonerated in the quasi-judicial proceedings and such order has attained finality, Chief Commissioner shall give direction to the Central Excise Officer in the concerned Commissionerate to file an application through Public Prosecutor requesting the Court to allow withdrawal of the Prosecution in accordance with law. These instructions shall mutatis-mutandis apply to the prosecution filed under the Finance Act, 1994 and under the Customs Act, 1962.

4. Necessary instructions may be issued in this regard. Hindi version would follow.

(ROHAN)

Under Secretary to the Government of India